

IDAHO DEPARTMENT OF LANDS

**Public Hearing on Proposed Fee Rules
IDAPA 20, Rules of the IDL**

[START RECORDING]

MR. ERIC WILSON: Okay. Recording has started. Okay. It is now 9:00 A.M. on Wednesday, September 30th, 2020. We are on the record for the public hearing bearing proposed rule docket 20-0000-2000F.

Good morning. My name is Eric Wilson, Public Trust -- the Resource Protection and Assistance bureau chief for the Idaho Department of Lands. Thank you all for attending today.

The most important part of this hearing is gathering testimony from the participants. To do that in an orderly fashion, with participants in person, through Zoom, and via phone I need to do some housekeeping first.

For those on Zoom and on the phone, please mute your screen or phone until you are ready to talk and then re-mute when you are done. This reduces feedback and distracting background noises as this hearing is being recorded.

For those attending in person, please keep your mask on and respect social distancing while in the building. If you are unable to do that, you'll be asked to leave and join via phone or

1
2 Zoom. Please make sure that you have signed in
3 and indicated which sets of rules you wish to
4 provide testimony on.

5 For those on Zoom, Mick Thomas, division
6 administrator for Mining, Public Trust, Oil and
7 Gas, please use the chat feature to help gather
8 the names of those participants and which rules
9 they wish to provide testimony on. The chat
10 function is on the bottom bar of your Zoom
11 screen.

12 For those on the phone only, I will ask each
13 of you to clearly state your name and identify
14 which set of rules you wish to provide testimony
15 on. We aren't taking testimony yet, but we will
16 be going through each set of rules in turn for
17 testimony on those rules. So do we have anyone
18 on the phone?

19 MR. MICK THOMAS: Eric, if you don't mind,
20 I'm going to hop in real quick and do a little
21 bit of housekeeping on my end. Thank you for
22 the introduction.

23 Again, my name is Mick Thomas, division
24 administrator over Minerals, Public Trust, Oil
25 and Gas. Eric is on site today and he's the,

1 uh--he'll be leading this discussion.

2
3 If you are on Zoom, please use the chat
4 function. It's a little icon at the bottom that
5 says 'Chat.' Enter your name, type it in, and
6 send it to the group. You can say 'Reply all'
7 and enter your name in there so we have it.

8 If you don't put your name in via chat or
9 tell us verbally, um, now, or sign the sign-in
10 sheet onsite with Eric, you won't be recorded as
11 being a part of this hearing--or, uh, public
12 comment period, excuse me.

13 And something else that Eric said as a
14 courtesy as far as muting goes, obviously this
15 doesn't apply to the folks in the room, but if
16 there is background noise, we will ask you to
17 mute. If it doesn't happen, we will mute you
18 proactively. And if it continued, we would have
19 the discretion to disconnect you remotely.
20 Again, that's a worst-case scenario.

21 But it's very important, especially the
22 folks on the phone and Zoom--well, yeah, to
23 please mute whenever possible because of the
24 echo and the background noise. So thanks a ton.

25 John, I think you--I see you just signed in.

1
2 Thank you very much. And I'll repeat what Eric
3 said. Is there anyone on the phone or who would
4 like to sign in orally right now other than--you
5 know, if not you could--you could use the chat
6 function. But right now, is there anyone who
7 would like to sign in orally by stating and
8 spelling your name?

9 Okay. Fine. I appreciate that. And, Eric,
10 I'll hand it back to you. Thank you for that.
11 Thank you for the flexibility to let me say some
12 words.

13 MR. WILSON: All right. Thanks, Mick.
14 Okay. Well, thank you all for your patience
15 since we completed the roll call first for
16 participants.

17 Before we start the hearing, I want to give
18 a general background for this hearing. This
19 rule docket is for all fee rules administered by
20 the Idaho Department of Lands. The 2020
21 legislature did not pass a concurrent resolution
22 to approve all fee rules through the next
23 legislative session. As a result, all fee rules
24 expired at the end of the 2020 legislative
25 session.

1
2 The Board of Land Commissioners, Oil and Gas
3 Conservation Commission, and Idaho Board of
4 Scaling Practices approved temporary rules to
5 fill in the gap between the end of the 2020
6 legislative session and the end of the 2021
7 legislative session.

8 This rule docket seeks to bring a set of
9 pending rules before the 2021 legislature for
10 their review and approval as permanent rules.
11 These rules are largely the same as the current
12 temporary rules with one exception IDAPA
13 20.03.02 rules governing mined land reclamation.

14 House Bill 141 passed during the 2019
15 legislative session made substantial
16 modifications to Title 47, Chapter 15, Idaho
17 Code.

18 The changes to the Mined Land Reclamation
19 Act required a temporary rule to be approved
20 before August 1, 2019. The Department met this
21 deadline but further negotiations were needed to
22 replace the temporary rule with the pending rule
23 to be reviewed by the legislature.

24 Those negotiations were conducted August
25 through November 2019 under Docket Number 20-02-

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1
2 -excuse me; Docket Number 20-0302-1901, and from
3 May to August 2020 under Docket Number 20-0302-
4 2001.

5 Compliance for executive orders 2019-02 and
6 2020-01 required additional changes. And
7 rulemaking by the Department of Environmental
8 Quality on ore processing by cyanidation rules
9 IDAPA 58.01.13 required parallel changes to the
10 proposed rule for IDAPA 20.03.02.

11 Testimony on IDAPA 20.03.02, rules governing
12 mined land reclamation, will be taken first.
13 Following that, the Department will take
14 testimony on all other fee rules in the order
15 listed on Page 986 of the administrative
16 bulletin.

17 The format of this hearing is prescribed by
18 rule. This prescribed hearing format does not
19 include an opportunity for multi-party dialogue.
20 The hearing is your opportunity to provide
21 public testimony regarding the proposed rules.

22 If you have questions or would like me to
23 discuss the rule or some other aspect related to
24 rules, please contact me directly afterwards and
25 we'll give you the contact information or the

1 program manager or bureau chief best suited to
2 answer your question.
3

4 Testimony that strays too far from the rules
5 may be gently guided back to the proposed rules.
6 This is a public forum and I ask all of you to
7 listen respectfully to all speakers and to speak
8 respectfully to all listeners.

9 These proposed rules were published in the
10 September 16, 2020, Idaho Administrative
11 Bulletin, Volume 20-9SE. The rules in the
12 bulletin are the official versions and all
13 comments should be based on that version.

14 A rulemaking website is now updated and
15 provides a web link to the bulletin and offers
16 an overview of the rulemaking. Both written and
17 oral comments are very important at this stage
18 of the rulemaking. Changes to the proposed rule
19 can only be made based on written or oral
20 comments received on or before October 7, 2020.

21 IDL will review these comments and evaluate
22 whether or not additional rule changes are
23 needed. We will then prepare the rules for
24 review by the Idaho State Board of Land
25 Commissioners at their October meeting, by the

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1
2 Oil and Gas Conservation Commission and Idaho
3 Board of Scaling Practices at their November
4 meeting. Based on their recommendations, we
5 will then submit pending rules for consideration
6 by the 2021 legislature.

7 Please make sure that IDL receives your
8 comments before October 7th. If you've brought
9 written comments today, please make sure to give
10 us a copy.

11 As a suggestion to help move things along
12 and give everyone who wishes an opportunity to
13 speak, those who plan to submit typed written
14 comments should best use their oral testimony to
15 briefly summarize the written comments or to
16 elaborate on specific points.

17 Since the written oral comments are given in
18 the same--are given the same consideration,
19 simply reading your submitted written comments
20 verbatim does not give them more weight.
21 Regardless of whether or not you have written
22 comments to submit, please do not hesitate to
23 testify. This is your opportunity to give us
24 feedback on the rules.

25 Please make sure you have signed in at the

1
2 back of the room and have checked the boxes for
3 either written testimony, oral testimony or
4 both. Everyone who wants to speak gets one turn
5 at the microphone per set of rules. There will
6 be no rebuttals.

7 As there is no time limit on testimony,
8 please keep in mind that other people may have
9 signed up to testify and we will adjourn by
10 10:30 A.M.

11 And with that, did I get the sign-in sheet?
12 So then we will start with IDAPA 20.03.02, rules
13 governing mined land reclamation, and we will
14 start with those who are here in person. And
15 then we'll move to our Zoom participants, and
16 then if there's phone-only participants, they
17 will follow.

18 Okay. We don't have anyone signed up in
19 person for oral testimony. So have we--are we--
20 okay.

21 MALE VOICE: [Unintelligible].

22 MR. WILSON: All right. I will--

23 MALE VOICE: [Unintelligible].

24 MR. WILSON: Yeah, up here on the podium.

25 So first we have Ben Davenport with the Idaho

1 Mining Association. Again, this is IDAPA
2 20.03.02.
3

4 MR. BEN DAVENPORT: Thanks, Eric and Ben
5 Davenport with the Idaho Mining Association. I
6 will be brief today as we are preparing written
7 comments on the document on the docket.

8 But I wanted to stand up and make sure
9 everyone knew how appreciative we were with the
10 department in the process over the last 18
11 months and 10 drafts of this rule. We've seen--
12 I don't know over 100 comments and had plenty of
13 rulemaking so I thought the process went well.

14 Stakeholders were engaged and I want to
15 express my gratitude to the Department for
16 taking our comments into consideration as well
17 as the other stakeholders.

18 And I do think you have a rule that is close
19 and something that will be workable for both the
20 industry and for the Department in the future
21 going forward.

22 I think it is--I think it would--it was
23 imperative for the State of Idaho to update
24 their financial assurance regulations and I
25 think we achieved much of our goals throughout

1
2 this process as well as throughout the drafting
3 of the statute and the House Bill 141.

4 So I am hopeful that we can continue to go
5 forward and that the industry will certainly see
6 this as a benefit, and the State of Idaho and
7 the taxpayers will also see the benefit in the
8 updating of these rules.

9 So that's all I have today, but we will
10 provide some written comments in regards to a
11 few small changes that I think we would like to
12 see in the docket, but I don't think they're
13 major and I think we're real close to it.

14 So I appreciate the time over the last
15 couple years and I appreciate your time today.

16 MR. WILSON: Okay. That does it for our in-
17 person testimony. Is there anybody on Zoom who
18 would like to provide testimony on 20.03.02?

19 MR. THOMAS: We are monitoring that, Eric.
20 Stand by.

21 MR. WILSON: Okay. Thanks, Mick.

22 MR. THOMAS: So far no one has sent me a
23 message saying they would like to provide
24 comment. The majority of people on Zoom are
25 from affiliated agencies but we do have a few

1 stakeholders here as well.

2
3 Specifically, I see Lori Lusty with Simplot.
4 Lusty and Allen Gilda. I don't think neither
5 one of them has sent me a text. Wait. Stand
6 by. Allen Gilda is indicating he'll offer a
7 comment by phone. He did dial in to the Zoom
8 number so let's see if we can bring him on. Go
9 ahead, Allen.

10 MR. ALLEN GILDA: This is Allen.

11 MR. WILSON: Go ahead, Allen.

12 MR. GILDA: Yes. Thank you for allowing us
13 to try to participate in this rulemaking.

14 While the rules who--will look like they
15 work for the larger mining companies, there
16 still seems to be discrimination against the
17 small miner, the hard rock bucket miner.

18 You know, I'll continue to stand up and
19 argue on that end of things that there should be
20 either something that the rules are--to provide
21 appropriate, size-appropriate regulations or
22 requirements versus taking a small person that
23 wants to disturb a few square--a few hundred
24 square feet or an acre or so and making them go
25 through the same things.

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1 I mean that's 50 or a 100 or a 1,000 acres
2 to go through, so that's--that's my concern
3 still that that is--the small guy hasn't been
4 addressed. And as a result because of the cost,
5 all the way around from the application fees to
6 the required information in these rules that the
7 small guy basically is shoved out the door in
8 Idaho.
9

10 And I've provided a couple of examples
11 throughout the time and I'll go ahead and submit
12 those in writing on places where wording can be
13 provided. I know in the formal summary you said
14 that small operations such as the bucket miner
15 ones for hard rock does not require reclamation
16 plans for operation.

17 But the rules don't seem to reflect that
18 same viewpoint or they say 'all mining
19 operations, exploration, etc.' So if there is
20 such thing as it doesn't require for such small
21 operations, as like my bucket mining operations
22 or projects, then maybe there's some place that
23 you can put it in either under exploration or
24 under the 'do not apply' or somewhere in that
25 area.

1
2 So I'll be supplying more information on
3 that in the written testimony, but that's where
4 I'm coming from still.

5 MR. THOMAS: Mr. Gilda, thank you for that
6 comment. I do have a clarifying question for
7 you and I know we're not in negotiated
8 rulemaking currently.

9 I just want to make sure I understand that
10 your comments are going to revolve around us
11 providing clarity as to who these changes apply
12 to and who they don't, or what operations they
13 apply to and what they don't apply to?

14 MR. GILDA: Yeah, because in the--the
15 September 16th public summary of the note--of
16 the negotiated rulemaking you say that IDL has
17 not required a reclamation plan for operation as
18 described in the comments.

19 But the rules themselves say that 'all
20 must,' and so that--that seems like a
21 contradiction in directive for a small operator.
22 So that's--I'm trying to get some, yes, some
23 clarity in that and, you know--or if we have to
24 go through the permitting thing, that's not a
25 problem if it is size appropriate and reasonable

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1 fees for a small--a small-scale operation that's
2 more like a weekend hobby project.

3
4 MR. THOMAS: All right. Thank you, Mr.
5 Gilda. I appreciate that clarification.

6 MR. GILDA: You're welcome. Thank you.

7 MR. THOMAS: Next is Patty McGrath with the
8 United States Environmental Protection
9 Association Region 10. She's going to make a
10 brief comment so, Patty, it's to you.

11 MS. PATTY McGRATH: Okay. I hope you all
12 can hear me.

13 MR. THOMAS: We've got you. Thank you.

14 MS. McGRATH: Great. I just want to make a
15 brief comment to, I think, similar to Ben's
16 comment, express appreciation for the work that
17 the Idaho Department of Lands has done on the
18 rule and the negotiated rulemaking process and
19 allowing us to provide comments and input into
20 the process.

21 And we have seen changes to the rule based
22 on our comments and other stakeholders'
23 comments, so that's highly appreciated. I'm not
24 sure if EPA will be sending written comments on
25 the draft rule. We're still looking at it and

1 making that determination, but I did want to
2 just take the time to express my thanks to the
3 Idaho Department of Lands, and thanks from EPA
4 management as well who have been involved in
5 helping review the rule and participate in the
6 process.
7

8 MR. THOMAS: Thank you, Patty. Do you have
9 any more comments?

10 MS. McGRATH: Not at this time.

11 MR. THOMAS: All right. All right. Thank
12 you very much. I don't have anyone else who has
13 asked to comment via Zoom. I'll give one last
14 call. All right. No more comments by Zoom.
15 Eric?

16 MR. WILSON: Okay. Is there anyone just on
17 the phone who wants to provide oral testimony?
18 Going once? Twice? Okay. Great. So that
19 wraps up the 20.03.02 portion.

20 And with that we'll move on to the next
21 rule, 20.02.14, rules for selling forest
22 products on state-owned endowment lands starting
23 on Page 989 of the bulletin. Does anybody wish
24 to provide comment on those rules? Okay. Not
25 hearing anyone.

1
2 The next rule is 20.03.01, rules governing
3 dredge and placer mining operations in Idaho
4 starting at Page 992 of the bulletin. Does
5 anybody wish to provide comments on those rules?

6 MR. THOMAS: And, folks, when Eric says
7 that, he also includes the Zoom participants if
8 there is any confusion.

9 MR. WILSON: Okay. Next, 20.03.03, rules
10 governing administration of the reclamation fund
11 starting on Page 1051 of the bulletin. Does
12 anybody wish to provide comment on these rules?
13 Okay.

14 The next is IDAPA 20.03.04, rules for the
15 Regulation of Beds, Waters, and Airspace for
16 Navigable Lakes in the State of Idaho, starting
17 on Page 1055 of the bulletin. Does anybody wish
18 to provide comment on this rule?

19 MR. THOMAS: Okay. You're doing a
20 phenomenal job.

21 MR. WILSON: Okay, great. I'm filling them
22 up here. Next is IDAPA 20.03.05, River Bed
23 Mineral Leasing in Idaho, starting on Page 1074
24 of the bulletin. Does anybody wish to provide
25 comment on this rule? Okay.

1
2 Next is IDAPA 20.03.08, easements on state-
3 owned lands starting on Page 1079 of the
4 bulletin. Does anybody wish to provide
5 testimony on this rule? Okay. We'll take that
6 as a 'no.'

7 Next is IDAPA 20.03.09, Easements on State-
8 owned Submerged Lands and Formerly Submerged
9 Lands starting on page 1084 of the bulletin.
10 Does anybody wish to provide testimony on this
11 rule? I'll take that as a 'no.'

12 Next is IDAPA 20.03.13, Administration of
13 Cottage Site Leases on State Lands starting on
14 Page 1090 of the bulletin. Does anybody wish to
15 provide comments on this rule?

16 MR. THOMAS: Eric, it looks like we do have
17 a comment coming.

18 MR. WILSON: Okay. Go ahead.

19 MR. THOMAS: Allen, you--you--are you going
20 to make some comment on that or not? Or Mr.
21 Gilda?

22 MR. GILDA: No, I didn't have any comments
23 on these.

24 MR. THOMAS: Okay.

25 MR. GILDA: Maybe it's somebody else's

comment but it looks like they must be muted or something.

MR. THOMAS: All right. That's fine. We were just trying to manage it here so thank you, and your number popped up, right? So I was trying to be proactive, but it doesn't look like we have any comments on this, Eric. Thank you.

MR. WILSON: Okay. Cottage site rules are a 'no' then for comments. IDAPA 20.03.14, the rules governing grazing, farming, conservation, and noncommercial recreation, and communication site leases beginning at Page 1091 of the bulletin. Any comments on these rules? Okay. I'll take that as a 'no.'

Next is IDAPA 20.03.15, rules governing geothermal leasing on Idaho state lands starting at Page 1101 of the bulletin. Any comment on these rules? Okay. We'll take that as a 'no.'

Next is IDAPA 20.03.16, rules governing oil and gas leasing on state lands starting on Page 1114 of the bulletin. Any comment on these rules? Okay. I'll take that as a 'no.'

Next is IDAPA 20.03.17, rules governing leases on state-owned submerged lands and

2 formerly submerged lands starting on Page 1127
3 of the bulletin. Any comments on these rules?
4 Okay. I'll take that as a 'no.'

5 Okay. We're in the home stretch, folks.
6 Next is IDAPA 20.04.02--

7 MR. THOMAS: [Interposing] Stand by, Eric.
8 We had someone hop in.

9 MR. WILSON: Oh, okay.

10 MR. THOMAS: Was--was there comments?

11 MS. WENDY MILLER: Yeah. I--

12 MR. THOMAS: [Interposing] Go ahead.

13 MS. MILLER: Uh, yeah. I'm sorry. I'm a
14 little bit out of place. I had a difficulty.
15 It said to type 'star six' and to be able to
16 speak. This is Wendy Miller and I wasn't able
17 to speak back in the beginning.

18 So then I hung up, I recalled, and now I'm
19 able to get through, so I'm a little out of
20 place. Can I make a comment here?

21 MR. THOMAS: Wendy, thank you. Ms. Miller,
22 thank you. And just for the record, I believe
23 you're wanting to talk about 20.03.02?

24 MS. MILLER: That is correct, mm-hmm.

25 MR. THOMAS: All right. Please, go ahead.

1
2 MS. MILLER: Yes. First of all, I'm
3 grateful for meetings and comments to include to
4 the--that you've included it in to the public.
5 And I'm also grateful for you answering
6 questions and I have a question for IDL if
7 that's all right.

8 I have mining claims on this federal land
9 and with respect to mining on it, after I get
10 these permits and I have my bonds from the feds,
11 what does IDL require before I can start mining
12 on it?

13 MR. WILSON: So, Ms. Miller, we can talk
14 about that offline after the hearing. This is
15 not a question and answer session.

16 You missed the intro. This rule format is
17 for--or the hearing format is prescribed by
18 rule. We are only accepting comment. This is
19 not a discussion forum, but we certainly--

20 MS. MILLER: [Interposing] Okay.

21 MR. WILSON: --can certainly have that
22 discussion with you afterwards.

23 MS. MILLER: Okay.

24 MR. THOMAS: Ms. Miller, I've got your
25 phone. I'll coordinate with Eric this afternoon

1 if at all possible to get back on the phone with
2 you, okay?

3
4 MS. MILLER: Thank you.

5 MR. THOMAS: Thank you. Okay, Eric. We're
6 back on line.

7 MR. WILSON: Okay. We are on IDAPA
8 20.04.02, rules pertaining to the Idaho Forestry
9 Act and Fire Hazard Reduction laws starting on
10 Page 1135 of the bulletin. Are there any
11 comments on these rules? Okay. We'll take that
12 as a 'no.'

13 Next is IDAPA 20.06.01, rules of the Idaho
14 Board of Scaling Practices starting on Page 1145
15 of the bulletin. Are there any comments on
16 these rules? Okay. We'll take that as a 'no.'

17 And last one, IDAPA 20.07.02, rules
18 governing conservation of oil and natural gas in
19 the state of Idaho starting on Page 1155 of the
20 bulletin. Are there any comments on these
21 rules? Okay. We'll take that as a 'no.'

22 And then before ending, I have one last
23 chance. Is there anyone else in attendance who
24 would like to provide comments but didn't
25 indicate so? And this is your turn to comment

1
2 on a rule that you did not previously commented
3 on? Anyone? Okay. Mick, anyone on the Zoom or
4 phone?

5 MR. THOMAS: No, no one--no one came
6 through. I think the two people that I was
7 aware of was Patty, Allen, and Wendy and they
8 all provided comment and obviously Mr. Davenport
9 was there in person, and so we appreciate that.

10 MR. WILSON: Great, thank you. So that
11 closes it the hearing for today. It is now
12 9:33. Thank you for participating in the rule
13 making process.

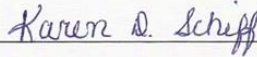
14 MR. THOMAS: Thanks, folks. Chris, you can
15 stop recording now and we'll go ahead and end
16 the session.

17 [END RECORDING]
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C E R T I F I C A T E

I, Karen D. Schiff, certify that the foregoing transcript of the Idaho Department of Lands, Public Hearing held on September 30th, 2020, was prepared using standard electronic transcription equipment and is a true and accurate record to the best of my ability. I further certify that I am not connected by blood, marriage or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

Signature:

A rectangular box containing a handwritten signature in cursive that reads "Karen D. Schiff".

Date _____ October 11, 2020 _____